

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re: Leonard and Margaret Briskey,

Debtors.

Case No. 02-52004
Chapter 13
Hon. Marci B. McIvor

**OPINION DENYING TRUSTEE'S OBJECTIONS TO FIRST
APPLICATION FOR ATTORNEY FEES**

This matter is before the Court on the Trustee's Objections to Debtors' Counsel's First Application for Attorney Fees. The Trustee objects to the hourly rate as excessive and asserts that the pre-confirmation expenses requested cannot be awarded post-confirmation. For the reasons stated in this Opinion, the Court sustains in part and denies in part the Trustee's Objections.

Jurisdiction

This is a core proceeding under 28 U.S.C. § 157 (b)(2)(A) over which this Court has jurisdiction pursuant to 28 U.S.C. §§ 1334 and 157(a).

Statement of Facts

Debtors filed a voluntary Chapter 13 bankruptcy petition on May 20, 2002. An Order Confirming Plan was entered on September 19, 2002. The Order provided for attorney fees and expenses of \$1,400.00. On April 5, 2005, Debtors' counsel filed an application for attorney fees seeking an additional \$ 1,120.00 (5.6 hours at \$200.00 per hour) for services rendered post-confirmation and \$ 169.75 for expenses (copies and postage). On April 20, 2005, the Trustee filed objections to the request for additional fees. The Trustee contends that the hourly rate of \$200.00 is excessive and that the expenses requested are pre-confirmation expenses not payable post-confirmation.

Standard for Fee Awards in Bankruptcy

A court has the duty to review all fee applications, regardless of whether an objection has been filed, in order to protect the assets of the estate for the benefit of the creditors. 11 U.S.C. § 330(a)(2); *In re Bush*, 131 B.R. 364, 365 (Bankr. W.D. Mich. 1991). A bankruptcy court has broad discretion in determining fee awards. *Manufacturers Nat'l Bank v. Auto Specialities Mfg. Co.* (*In re Auto Specialities Mfg. Co.*), 18 F.3d 358 (6th Cir. 1994).

Section 330(a)(1) of the Bankruptcy Code provides that the court may award an attorney reasonable compensation for actual, necessary services rendered. 11 U.S.C. § 330(a)(1).

Section 330(a) provides, in pertinent part:

(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, an examiner, a professional person employed under section 327 or 1103 -

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(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any para-professional person employed by any such person; and

(B) reimbursement for actual, necessary expenses.

(2) The court may, on its own motion or on the motion of the United States Trustee, the United States Trustee for the District or Region, the trustee for the estate, or any other party in interest, award compensation that is less than the amount of compensation that is requested.

(3) In determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant facts, including

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of

time commensurate with the complexity, importance, and nature of the problem, issue or task addressed; and

(E) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

(4)(A) Except as provided in subparagraph (B), the court shall not allow compensation for --

(i) unnecessary duplication of services; or

(ii) services that were not --

- (I) reasonably likely to benefit the debtor's estate, or;
- (II) necessary to the administration of the case.

11 U.S.C. § 330(a) (emphasis added).

To summarize, 11 U.S.C. § 330(a) requires that requested fees must meet three conditions. The fees must be: (1) reasonable; (2) incurred for services that were actually rendered; and (3) incurred for services that were necessary. *In re Allied Computer Repair, Inc.*, 202 B.R. 877 (Bankr. W.D. Ky. 1996).

The Sixth Circuit has adopted a "lodestar method" for actually applying the requirements set forth in 11 U.S.C. § 330. *In re Boddy*, 950 F.2d 334, 337 (6th Cir. 1991). The lodestar method requires that the court first determine a reasonable hourly rate, and then multiply the rate times the reasonable number of hours expended to perform actual, necessary services. The Court may "then determine whether a global reduction or enhancement of the fees is in order." *In re Atwell*, 148 B.R. 483, 492-93 (W.D. Ky. 1993). The ability to review fee applications in the context of each individual case "permits the Court to balance the following two competing interests: (1) rewarding the attorney practicing bankruptcy on a level commensurate with other areas of practice; against (2) the need to encourage cost-conscious administration." *Allied Computer Repair, Inc.*, 202 B.R. at 884-85. The burden of proof is upon the applicant to justify the requested fees. *In re Hamilton Hardware Co., Inc.*, 11 B.R. 326 (Bankr. E.D. Mich. 1981).

Objections to Fees

1. Hourly Rate

The Trustee objects to the hourly rate charged by Debtors' attorney, asserting that the rate is excessive. (Trustee's Objections ¶ 2). Bankruptcy attorneys are generally entitled to an hourly fee in line with the prevailing market rates in the community. *In re ACT Manufacturing*, 281 B.R. 468, 486 (Bankr. D. Mass. 2002)("[T]he Court should apply the rate customarily charged for similar services in the locality. . . "). The Court may itself determine the prevailing market rate in the community and thus evaluate the reasonableness of the attorneys' hourly rate. *In re Computer Learning Centers*, 285 B.R. 191, 227 (Bankr. E.D. Va. 2002). "The court is in an excellent position to evaluate the prevailing market rate for attorney's fees by virtue of the innumerable fee applications presented to [it]. . . The very number of applications provides an exceptional view of the breadth and depth of the legal community and the fees charged. . ." *Id.*

In the present case, the Trustee objects to the hourly rate asserting that it is excessive as compared to the rate charged by comparable chapter 13 practitioners. The Trustee ostensibly believes that the quality of the services performed was not significantly above average. While the Court agrees that an hourly rate of \$200 is above average in the context of most chapter 13 cases, it is warranted in this case. Debtors' Counsel seeks payment of fees for services performed post-confirmation. Very few attorneys stay involved in a case after confirmation and the Court believes attorneys should be encouraged and/or rewarded for continuing to represent a debtor post-confirmation. A case is much more likely to conclude successfully (through completion of the plan and discharge) if counsel remains involved.

In this case, the services performed by counsel justify the rate requested. Counsel accepted a flat fee for the period from the filing of the case through confirmation and obtained a positive result. The hourly rate sought for post-confirmation services is reasonable in light of the

success of the case and the lack of pre-petition hourly fees.

2. Compliance with Local Rules

While the issue is not raised by the Trustee's Objections, the Court notes that Debtors' Counsel's Fee Application fails to include a biographical statement of professional experience as required by L.B.R. 2016-1 (b)(11) (E.D. Mich.). Future fee applications will not be approved by this Court without full compliance with the local rules.

3. Post-Confirmation Costs and Expenses

The Trustee objects to the expenses requested for copies and postage of the Petition and the Plan because they are pre-confirmation expenses which were (or should have been) included in the plan at the time of confirmation. Counsel is bound by the Order Confirming Plan and cannot be paid pre-confirmation costs post confirmation. The Trustee's Objections regarding costs and expenses is sustained.

4. Fees Related to Preparing Fee Application

While the issue is not raised by the Trustee's Objections, the Court notes that the time entry dated March 31, 2005 seeks \$160.00 for the preparation of Counsel's fee application (.8 hours at \$200 per hour). "Absent exceptional circumstances, fees for the preparation of fee applications should be limited to 5% of the total fees requested." *In re Bass*, 227 B.R. 103, 109 (Bankr. E.D. Mich. 1998).

Applying *Bass* to the present fee application, Debtors' counsel is entitled to no more than \$ 48.00 in fees related to preparing the fee application (5% of \$ 960.00). Counsel's fee request will therefore be reduced by \$ 112.00. (\$160.00 - \$48.00).

Conclusion

For the reasons stated above, the Court sustains in part and denies in part the Trustee's

Objections to Debtors' Counsel's First Application for Attorney Fees. Debtors' Counsel is awarded fees in the amount of \$ 1,008.00. Counsel's request for costs and expenses is denied.

_____/s/_____
Marci B. McIvor
United States Bankruptcy Judge

Dated: May 12, 2005
Detroit, Michigan

cc: David Ruskin
Michelle Marrs